

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9037 OF 2005

Punjababa Govardhane Vidyavikas
Pratishthan & Anr. ... Petitioners

V/s.

Govind Pundlik Jadhav & Anr. ... Respondents

Mr.M.M. Sathaye for Petitioners
Mr.V.N. Tayade for Respondent No.1
Mr.R.M. Patne, AGP, for Respondent No.2

CORAM: SMT.NISHITA MHATRE, J.

DATED: AUGUST 30, 2007

P.C.:

. The petitioners challenge the order of the Presiding Officer, School Tribunal, Nasik dated 30.6.2005. The School Tribunal has allowed the appeal filed by Respondent No.1 and held that the order of termination dated 5.6.2003 is illegal and void. The Tribunal has directed the petitioners to reinstate Respondent No.1 as an Assistant Teacher with full backwages and benefits of continuity and seniority.

2. Respondent No.1 was appointed on 25.9.2000. The qualifications which he held were B.P.Ed. The petitioner terminated the services of Respondent No.1 since he did not hold the requisite qualifications for being appointed as an assistant teacher and, therefore, approval had not been granted to his

appointment.

3. The School Tribunal, without considering whether the appointment of Respondent No.1 was legal, has allowed the appeal. In my view, the illegality in appointment of Respondent No.1 is crucial and would affect the ultimate decision in the appeal. It has been so pleaded by the petitioner in its written statement and, therefore, the school tribunal ought to have framed an issue as to whether the appointment of Respondent No.1 itself was legal. In fact the judgment of this Court in the case of *Shivshakti Shikshan Sanstha Kotha (Veni) & anr. v/s. Nilkanth Kawaduji Shivankar & Anr.*, **2005(2) Bom.C.R. 105** considers the equivalence of training qualifications of B.P.Ed. and B.Ed. as also the Government Resolution dated 14.5.1987. A learned Single Judge of the Nagpur Bench of this Court has held that the B.P.Ed. degree is not a substitute for the qualifications of B.Ed. as they are not equivalent. The Tribunal ought to have considered all these factors before arriving at the conclusion that the services of Respondent No.1 had illegally been terminated.

4. The order of the Tribunal is therefore set aside. In my view, it would be appropriate to remand the matter to the Tribunal to decide the question as to whether the appointment of Respondent No.1 was legal

before embarks upon an enquiry into the other issues.

5. The petitioner has already deposited Rs.80,000/- in this Court pursuant to the directions issued on 9.2.2007. This amount of Rs.80,000/- be transferred to the account of the School Tribunal in Appeal No.NSK/29/2003. The Tribunal to ensure that the amount of Rs.80,000/- is invested in a nationalised bank during the pendency of the appeal. All contentions of the parties are left open to be decided by the Tribunal.

6. Writ petition is disposed of accordingly.